

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 08 C 2484
)	
v.)	
)	
GARY F. HUCK AND SUSAN M. HUCK,)	Judge Joan H. Lefkow
)	
Defendants.)	

MOTION FOR DEFAULT JUDGMENT

The United States, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, pursuant to Fed. R. Civ. P. 55(b)(2), seeks a default judgment in the amount of \$34,867.31 against defendants, Gary F. Huck and Susan M. Huck, and in support states as follows:

1. On May 1, 2008, the United States filed a complaint seeking breach of contract damages under a promissory note in the total amount of \$34,474.27 plus 5.0% interest from March 3, 2008 to the date of judgment and costs.
2. On May 5, 2008, defendants were mailed a copy of the complaint and a Fed. R. Civ. P. 4 waiver of service request, which they signed and returned on May 12, 2008. *See* Exhibit A. Under Rule 4, defendants were required to file a responsive pleading within 60 days.
3. More than sixty days have elapsed since the date the waiver form was executed, and defendants have neither appeared in this cause nor answered or otherwise defended this action within the time provided by the federal rules.
4. The United States believes defendants have attained majority and does not have any information to indicate that the defendants are incompetent or in any branch of the military service.

5. There is now due and owing to the United States on the debt set forth in the complaint the following:

Principal:	\$20,261.12
Prejudgment interest to July 23, 2008 at 5.0% annually:	\$ 6,650.59
Administrative Charges:	\$ 7,955.60
Total:	\$34,867.31*

*Prejudgment interest continues to accrue at the above interest rates annually until the entry of judgment. Thereafter, the total amount accrues interest at the legal post-judgment interest rate. *See* Exhibit B.

6. The United States is entitled to \$350.00 in costs, as provided for by 28 U.S.C. §§ 2412(a)(2) and 1914(a). Pursuant to local rule, a bill of costs will be filed with the Clerk of the Court within thirty days of the entry of judgment.

WHEREFORE, the United States requests that this Court enter judgment by default against Gary F. Huck and Susan M. Huck — in the amount of \$34,867.31, plus prejudgment interest from July 23, 2008 to the date of entry of judgment at the rate of 5.0% per year, and costs, with interest accruing from the date of judgment at the legal postjudgment rate — as no answer has been filed with respect to the complaint and any future answer would be untimely. A draft order of judgment by default accompanies this motion.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/ Melissa A. Childs
MELISSA A. CHILDS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5331
melissa.childs@usdoj.gov

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WAIVER OF SERVICE OF PROCESS

TO: Melissa A. Childs, Assistant U.S. Attorney

I acknowledge receipt of your request that I waive service of a summons in the action of United States v. Gary F. Huck and Susan M. Huck, which is case number 08 C 2484 in the United States District Court for the Northern District of Illinois. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring to be served with judicial process in the manner provided by Rule 4.

I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under Rule 12 is not served upon you within 30 days after MAY 5, 2008.

<u>05-12-08</u>	<u><i>Gary F. Huck</i></u>	<u>GARY F. HUCK</u>
(DATE)	(SIGNATURE)	(PRINTED NAME)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons) and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

2008A45099
JLN

UNITED STATES OF AMERICA,)	
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I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under Rule 12 is not served upon you within 30 days after MAY 5, 2008.

5/12/08
(DATE)

Susan Huck
(SIGNATURE)

SUSAN HUCK
(PRINTED NAME)

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AFFIDAVIT FOR DEFAULT JUDGMENT

MELISSA A. CHILDS states as follows:

1. I am an Assistant United States Attorney for the Northern District of Illinois, and I have been assigned by the United States Attorney to prosecute the claim against the defendants. This affidavit is made in accordance with FED. R. CIV. P. 55(b)(2), to obtain entry of a default judgment against the defendants for failure to answer or otherwise defend as to the United States complaint.

2. It appears from an examination of the records in this case that the defendants executed the Waiver of Service of Process on May 12, 2008. The original waiver form was filed with the Clerk of the Court.

3. More than sixty days have elapsed since the date the waiver was executed, and the defendants have not appeared in this cause and have not pleaded, answered or otherwise defended this action within the time provided by the rules of this Court.

4. The United States believes each defendant has attained the age of majority and we have no information that either defendant is incompetent. To comply with the Servicemembers' Civil Relief Act, I have also verified with the Department of Defense that neither defendant is on active duty in the military service.

EXHIBIT B

5. There is now due and owing to the United States on the debt set forth in the complaint the following:

Principal:	\$20,261.12
Prejudgment interest to July 23, 2008 at 5.0% annually:	\$ 6,650.59
Administrative Charges:	\$ 7,955.60
Total:	\$34,867.31*

*Prejudgment interest continues to accrue at the above interest rates annually until the entry of judgment. Thereafter, the total amount accrues interest at the legal post-judgment interest rate.

6. The United States is entitled to \$350.00 in costs, as provided for by 28 U.S.C. §§ 2412(a)(2) and 1914(a). Pursuant to local rule, a Bill of Costs will be filed with the Clerk of the Court within thirty days of the entry of judgment.

7. Accordingly, as set forth above, the United States requests that judgment be entered in favor of the United States, and against the defendant in the amount of \$34,867.31, with interest accruing until the date of judgment, plus interest accruing thereafter at the legal post-judgment interest rate.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct.

Executed July 24, 2008

By: s/ Melissa A. Childs
 MELISSA A. CHILDS
 Assistant United States Attorney
 219 South Dearborn Street
 Chicago, Illinois 60604
 (312) 353-5331
 melissa.childs@usdoj.gov